

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

LOUIS LEE ZACHERLE,

Defendant.

CASE NO: 2:24-CR-0044-TOR

ORDER ON PRETRIAL MOTIONS

BEFORE THE COURT are Defendant's Motion to Exclude Expert (ECF No. 25), Motion to Bifurcate (ECF No. 26), Motion to Dismiss Count 1 (ECF No. 27), and the United States' Motion in Limine (ECF No. 28). A Pretrial Conference was held on July 31, 2024. AUSAs Michael Vander Giessen and Timothy Ohms appeared on behalf of the United States. Justin Lonergan and Adrien L. Fox from the Federal Defenders of Eastern Washington and Idaho appeared on behalf of Defendant. Having reviewed the docket and the files therein, heard from counsel,

1 the Court is fully informed. This Order supplements the oral rulings made at the
2 Pretrial Conference.

3 **1. Defendant's Motion to Exclude Expert (ECF No. 25)**

4 The United States has designated Ginger Johnson as an expert to discuss the
5 dynamics of domestic or intimate partner violence. Ms. Johnson did not interview
6 either the victim or Defendant. Ms. Johnson is categorized as a "blind witness",
7 meaning she will talk about generalities about domestic or intimate partner
8 violence. At this time, the Court does not find her testimony to be helpful or
9 relevant to the charges before the Court. Accordingly, Defendant's motion to
10 exclude her testimony is granted at this time. Depending on how the trial plays
11 out, the Court may reconsider allowing her to testify.

12 Defendant also seeks to preclude the nurses and doctors from Mid-Valley
13 Hospital from testifying as experts. The United States is only offering their
14 testimony based on their capacities as percipient witnesses concerning their
15 observations of the victim, their identification and diagnosis of the various injuries
16 and any medical treatment. Accordingly, they are fact witnesses and their
17 testimony is allowed.

18 **2. Defendant's Motion to Bifurcate (ECF No. 26)**

19 Defendant seeks to bifurcate the trial and not allow Defendant's prior
20 convictions to be introduced unless and until the jury decides whether he

1 committed the two alleged assaults contained in the Indictment. Defendant
2 explains that his two prior convictions will prejudice the jury.

3 The Court agrees that introduction of his prior convictions will prejudice the
4 jury in their deliberations as to whether the assaults occurred. Therefore, the Court
5 will bifurcate that aspect of the case and only if the jury returns a guilty verdict as
6 to the assault will the United States then be allowed to introduce the prior
7 convictions and the jury will deliberate whether they are predicate offenses
8 supporting the habitual offender status.

9 **3. Defendant's Motion to Dismiss Count 1 (ECF No. 27)**

10 The Defendant seeks to dismiss Count 1 charging Defendant with being a
11 habitual offender in violation of 18 U.S.C. § 117. Having reviewed the paperwork
12 supporting the allegation that Defendant meets the prerequisites as a habitual
13 offender, the Court denies Defendant's motion to dismiss.

14 **4. United States' Motion in Limine (ECF No. 28)**

15 The United States raises five motions in limine. First, the United States
16 seeks to exclude witnesses from the courtroom and instruct witnesses not to
17 discuss their testimony until the trial is completed. Pursuant to Federal Rule of
18 Evidence 615, this motion is granted. Counsel shall direct their witnesses not to
19 talk about their testimony with anyone else until the trial is completed. All
20 witnesses are excluded from the courtroom (except the United States' case agent).

1 Second, the United States seeks to introduce other acts of domestic violence
2 against the victim in this case. Under Federal Rule of Evidence 404(b), the United
3 States is allowed to introduce such evidence. However, the evidence must be
4 relevant, recent, and similar. The Court will give the jury a limiting instruction
5 concerning this evidence.

6 Third, the United States seeks to introduce that Defendant fled from the
7 scene when the officers arrived. Evidence that Defendant fled from the scene is
8 relevant and admissible evidence.

9 Fourth, the United States seeks to introduce court records of prior
10 convictions and testimony concerning his conduct underlying those convictions.
11 This evidence is allowed as it pertains to the “habitual offender” status in Count 1
12 and will be allowed to be introduced if the jury returns a guilty verdict on the
13 assault charge.

14 Fifth, the United States seeks to introduce recorded hearsay statements of
15 some of the witnesses. These recorded statements may be introduced to refresh the
16 witness’s memory and to question the witness as to what was said. No recorded
17 statement may be introduced without the witness being present as Federal Rule of
18 Evidence 807 requires that in a criminal case the Defendant has a right to confront
19 the witness (Confrontation Clause).

1 The District Court Executive is directed to enter this order and provide
2 copies to counsel.

3 DATED August 1, 2024.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge